(154)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

Writ Petition No.2825 OF 2006

PETITIONER DEFENDANTS	1.	M/s Rajaram corn Products (Pb) Pvt. Ltd., Regd, & Head office, 17, Sector 4, Chandigarh
	2.	Subodh Kumar Gupta, R/o H.No.17, Sector – 4, Chandigarh
	Vs.	
RESPONDENTS PLAINTIFF		Suryakant gupta, Lal bagh, Rajnandgaon, Chhattisgarh

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Present : Mr. Manindra Shrivastava, learned Senior Advocate with Shri Amrito Das learned Counsel for the petitioners.
Mr. P.K.C Tiwari, learned Senior Advocate with Shri Avinash K Mishra learned Counsel for the respondent.

ORAL ORDER
(Passed on 20th June 2006)

There is a serious dispute between the parties with regard to the question whether M/s Rajaram Corn Products (Pb) Private Limited is a firm of which the members of the family of late Shri. Rajaram Gupta are the partners or it is the sole proprietorship of the respondent plaintiff. The respondent has instituted the suit out of which this writ petition has arisen in the Civil Court claiming that he is the sole proprietor of M/s Rajaram with a prayer that share of Rupees Thirty Lakhs has been issued to the M/s Rajaram Corn Products Private Limited through Shri Subodh Kumar Gupta be cancelled and some of Rs.2,43,577.50 be paid to him. The petitioner herein having put in appearance and contested the suit on merit, raised a preliminary objection with regard to the maintainability of the suit. The Civil Court held that the suit is maintainable. On the basis of the

above finding, the Civil Court by the impugned order made on an application of the plaintiff respondent under Order 38 Rule 5 CPC directed the petitioners herein to furnish the bank guarantee of Rs.21,00,000/-. It was contended that the finding of the Court below that the suit is maintainable is *ex facie* untenable and, therefore, even the impugned order directing the petitioner to furnish bank guarantee for Rs.21,00,000/- should be held as the one without jurisdiction. There is no need for this Court, at this stage, to decide the above legal print urged in this Court. The petitioners are entitled to raise that point in an appeal that may be preferred by them in the event of the trial Court Judgment and decree going against them. That liberty is reserved to them. The writ petition is, therefore, dismissed. The Civil Court is directed to expedite the trial of the suit.

Sd/-
Chief Justice